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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Helen Watson,

Plaintiff,

v.

Merrick Bank and DOES 1 through 100  
inclusive,

Defendants.

CASE NO.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Rosenthal Fair Debt Collection Practices Act
2. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Helen Watson, an individual, based on information and belief, to allege as follows:

**INTRODUCTION**

1. This is an action for damages brought by an individual consumer for Defendant’s violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §1788, *et seq.* (hereinafter “Rosenthal Act”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices and violation of the Telephone Consumer Protection Act 14 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

1 2. Plaintiff brings this action against Defendant Merrick Bank (hereinafter “Merrick” or  
2 “Defendant”) for its abusive and outrageous conduct in connection with debt collection  
3 activity.

4 3. In Calif. Civil Code § 1788.1(a)-(b), the California Legislature made the following  
5 findings and purpose in creating the Rosenthal Act:

6 (a)(1) The banking and credit system and grantors of credit to consumers are dependent  
7 upon the collection of just and owing debts. Unfair or deceptive collection practices  
8 undermine the public confidence which is essential to the continued functioning of the  
9 banking and credit system and sound extensions of credit to consumers.

10 (2) There is need to ensure that debt collectors and debtors exercise their  
11 responsibilities to another with fairness and honesty and due regard or the rights of the  
12 other.

13 (b) It is the purpose of this title to prohibit debt collectors from engaging in unfair or  
14 deceptive acts of practices in the collection of consumer debts and to require debtors to  
15 act fairly in entering into and honoring such debts, as specified in this title.

16 4. While many violations are described below with specificity, this Complaint alleges  
17 violations of the statutes cited in their entirety.

18 5. The TCPA was designed to prevent calls like the ones described herein, and to protect  
19 the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give  
20 consumers a choice as to how corporate entities may contact them and to prevent the nuisance  
21 associated with automated or prerecorded calls.

### 22 **JURISDICTION & VENUE**

23 6. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47 U.S.C. §  
24 227.

25 7. This venue is proper pursuant to 28 U.S.C. §1391(b).

### 26 **GENERAL ALLEGATIONS**

27 8. Plaintiff Helen Watson (hereinafter “Plaintiff”) is an individual residing in the state of  
28 California, and is a “debtor” as defined by Cal. Civ. Code §1788.2(g).

9. At all relevant times herein, Defendant Merrick was a company engaged, by the use of  
mail, email, and telephone, in the business of collecting a debt from Plaintiff, and a “consumer  
debt,” as defined by Cal. Civ. Code §1788.2(f).

1       10. At all relevant times, Defendant acted as a “debt collector” within the meaning of Cal.  
2 Civ. Code §1788.2(c)

3       11. Plaintiff had taken out an unsecured loan with Defendant in December of 2014.

4       12. The loan Plaintiff took from Defendant Merrick was extended primarily for personal,  
5 family or household purposes and is therefore a “debt” as that terms is defined by the Calif.  
6 Civil Code § 1788.2(d) of the Rosenthal Act.

7       13. Defendant Merrick has been attempting to collect on a debt that originated from  
8 monetary credit that was extended primarily for personal, family, or household purposes, and  
9 was therefore a “consumer credit transaction” within the meaning of Calif. Civil Code §  
10 1788.2(3) of the Rosenthal Act.

11       14. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant  
12 Merrick arising from what Plaintiff is informed and believes was a consumer credit transaction,  
13 the money allegedly owed was a “consumer debt” within the meaning of California Civil Code  
14 § 1788.2(f) of the Rosenthal Act.

15       15. Plaintiff is informed and believes that Defendant is one who regularly collects or  
16 attempts to collect debts on behalf of themselves, and is therefore a “debt collector” within the  
17 meaning of the Calif. Civil Code § 1788.2(c) of the Rosenthal Act, and thereby engages in  
18 “debt collection” within the meaning of the California Civil Code § 1788.2(b) of the Rosenthal  
19 Act, and is also therefore a “person” within the meaning of California Civil Code § 1788.2(g)  
20 of the Rosenthal Act.

21       16. Plaintiff’s account was an unsecured loan and Plaintiff began making payments on the  
22 accounts.

23       17. Plaintiff began making payments on the loan before she became financially unable to  
24 keep up with the monthly payments.

25       18. Defendant Merrick began contacting Plaintiff in May of 2016 to inquire about the  
26 status of the loan and to collect on the payments that were no longer being made.

27       19. Plaintiff retained counsel to assist in dealing with Merrick debt and to seek some type  
28 of financial relief.

      20. Counsel for Plaintiff sent Defendant Merrick a letter confirming representation of  
Plaintiff and that Defendant was to no longer contact Plaintiff directly and that all  
calls/letters/collection efforts were to no longer be directed at Plaintiff.

1 21. Counsel for Plaintiff sent the letter of representation to Merrick on or about May 19,  
2 2016.

3 22. Plaintiff informed Merrick that she was revoking her consent to be called on her  
4 telephone on May 17, 2016.

5 23. Defendant Merrick continued to contact Plaintiff between approximately May 18,  
6 2016 – present; the type of contact was through multiple daily phone calls to Plaintiff.

7 24. Plaintiff was contacted several times a day nearly every day regarding non-payment of  
8 the debt owed to Merrick despite Merrick being notified that Plaintiff had retained counsel to  
9 deal specifically with the debt owed to Merrick.

10 25. Merrick's calls were frequent in nature and continued despite receiving written  
11 confirmation that Plaintiff was represented by an attorney.

12 **FIRST CAUSE OF ACTION**

13 (Violation of the Rosenthal Act)

14 (Cal. Civ. Code §§ 1788-1788.32)

15 (Against Defendants and Does 1-100)

16 26. Plaintiff realleges and incorporates herein the allegation in each and every paragraph  
17 above as though fully set forth herein.

18 27. Plaintiff provided written notice that he was represented by sending Defendant a letter  
19 with the name, address, and contact information of her attorney and informed Defendant that she  
20 was represented.

21 28. Defendant continued to call and attempt to make contact with Plaintiff despite receiving  
22 notice of representation and being informed that Plaintiff had retained counsel in an effort to deal  
23 with the debt that was owed to Defendant.

24 29. The calls and communications made by Defendant to Plaintiff were not related to  
25 statements of Plaintiff's account and were attempts to collect a debt.

26 30. Plaintiff received multiple calls a day from Merrick from at least May 18, 2016 –  
27 present.

28 31. Defendant violated Cal. Civ. Code §1788.14 by contacting Plaintiff after receiving  
noticed that Plaintiff had retained an attorney.

**SECOND CAUSE OF ACTION**

(Violation of the TCPA)

(47 USC § 227)

(Against Defendants and Does 1-100)

1 32. Plaintiff realleges and incorporates herein the allegation in each and every paragraph  
2 above as though fully set forth herein.

3 33. Since at least about May 17, 2016 Defendant started calling Plaintiff's cellular  
4 telephone requesting that payment be made on the accounts Plaintiff held with Defendant.

5 34. Plaintiff informed Defendant that she was revoking consent to be contacted by Merrick  
6 on May 17, 2016.

7 35. Merrick called Plaintiff at least twice daily since Plaintiff withdrew her consent to be  
8 contacted by an automatic dialing machine.

9 36. Defendant would contact Plaintiff several times each day regarding payment on the  
10 accounts.

11 37. Plaintiff was contacted at least thirteen (13) separate times by Merrick after revoking  
12 her consent to be contacted on her cell phone by an automatic dialing machine.

13 38. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver  
14 the collection messages without Plaintiff's prior express consent.

15 39. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing  
16 system" as defined by 47 U.S.C. §227(a)(1).

17 40. These calls were made to Plaintiff's cellular telephone and were not calls for an  
18 emergency purposed as defined by 47 U.S.C. §227(b)(1)(B).

19 41. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §227(b)(1)(B).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment as follows:

- 22 **a.** An award of actual damages pursuant to California Civil Code §1788.30(a), as  
23 will be proven at trial, which are cumulative and in addition to all other  
24 remedies provided for in any other cause of action pursuant to California Civil  
25 Code §1788.32.
- 26 **b.** An award of statutory damages of \$1,000.00 pursuant to Cal. Civ. Code  
27 §1788.30(b), which are cumulative and in addition to all other remedies  
28 provided for in California Civil Code §1788.32; and
- c.** An award of costs of litigation and reasonable attorney's fees pursuant to Cal.  
Civ. Code §1788.30(c).

- d.** An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C. §227(b)(3)(C) for each and every violation.
- e.** Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

Dated: October 5, 2016

**SAGARIA LAW, P.C.**  
By: /s/ Scott Johnson  
Scott Sagaria, Esq.  
Scott Johnson, Esq.  
Attorneys for Plaintiff

## DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of this matter by jury.

Dated: October 5, 2016

**SAGARIA LAW, P.C.**  
/s/ Scott Johnson  
Scott Sagaria, Esq.  
Scott Johnson, Esq.  
Attorneys for Plaintiff